

B 18

THE
PRESENT STATE

OF THE
Practice and *Practisers*

OF THE
L A W,

Wherein is shewn
The OBSCURITY, UNCERTAINTY
and EXPENSIVENESS thereof;

WITH
Some METHODS humbly propos'd for
REMEDYING the same:

IN A
FAMILIAR DIALOGUE
BETWEEN
PHILALETHES and PHILONOMOUS.

By an IMPARTIAL HAND.

Felix quem faciunt aliena pericula cautum.

L O N D O N:

Printed for the AUTHOR, and sold by T.
COOPER, at the *Globe* in *Pater-noster*
and by the Booksellers of *London*
minster.

[PRICE ONE SHILLING]

B 14



TO THE
HONEST PRACTITIONERS
OF THE
L A W.

GENTLEMEN,

PERSONAL Prefaces are commonly unpleasant, for which Reason I have avoided making any ; and took this Method, by way of Dedication to you, not with such an Address as * *Demetrius* was wont to say, “ That *Knavery* was
“ the ready Way to Riches, and that
“ the casting off of Virtue was the
“ first Step to thriving in the World :
“ Study, *says he*, but the Art of
“ *Flattery* (which is now-a-Days so
“ acceptable, that a moderate Com-

* *Seneca, Epist. 15.*

“ mendment passēs for a Libel) study
 “ that Art, and you will do your
 “ Business without running a Risque
 “ upon the Seas, or any Hazards of
 “ Merchandizing, Husbandry or Law-
 “ suits : For there is not one Man of
 “ a Million that is Proof against an
 “ artificial Flattery.” But you, the
 Attornies at Law and Solicitors in
 Equity, in whose Power it is to be
 virtuous, and to build a sure Foun-
 dation for *Happiness*, encouraged
 thereto with the Profits of your *vir-*
tuous Labours, and just Endeavours,
 you should be, and I hope you all
 are, devoid of Flattery or any in-
 direct Conduct, or guilty of the least
 Disguise or pretended Falshood in
 your secret Directions to your Clients,
 discountenancing every Act that shall
 offer itself to your View where the
 least Appearance of Evil might call
 your Conduct in question ; never en-
 deavouring, by *secret or mental Reser-*
vations, for Gain, Profit or Applause,
 to

to over-reach or oppress your Neighbour, or any ways to make the Profits of your Employment the Destruction of Mankind; not but that, as the Scripture says, *the Labourer is worthy of his Reward*: Hoping that, in the doing thereof, you will endeavour, as far as is possible in each of your Stations, to *do as you would be done by*; for it is in your Power to be the Instruments of doing *much Good*, OR OF DOING A GREAT DEAL OF HARM: I say, in doing Good, you will not only reap the Rewards of your Labours in this World, by honest industrious Means, but you also will be entitled (if you make a Conscience in your Profits and in reconciling Differences) to all the Beatitudes mentioned, *Math. v.* by being *Peace Makers*. I need say no more upon this Subject; give me but Leave to add, that the following Sheets were composed, crude as they are, during some Intervals of Ease in a
long

long and dangerous Illness; and I could not help communicating to you this rude and unpolished Model, in order, if possible, that some more accurate Pen might enlarge thereon, and lay such a sure and lasting Foundation for Unanimity amongst Mankind, which is not in my Power alone, but chiefly in yours to get accomplished, and, by the PRESENT PARLIAMENT's wise Conduct, to reduce some of those Methods into Laws that I have laid down in the following Pages; for it is you that are greatly aggrieved and censured by Mankind, let the Fault be whose it will, you ought therefore to join and apply to the supreme Power for some Redress: *To whom should the Sick complain of their Disease but to the Physician? We all agree there are many Things apparently evil to be removed and prevented, and many Things apparently good to be introduced;*

duced; will any Man oppose? Will not all wise Men assist in the effecting thereof, that Offences and Oppressions may be removed, doubtful Laws expunged, good ones abridged; and to be well executed, that quick and speedy Justice might be done for the Recovery of Right, many useless Offices vacated, Justice rendered less expensive, the Proceedings shortned, which will make the Law less precarious, less tedious, and less uncertain: So that Men's Properties would be thereby well settled and secured without Prejudice to the Publick, and evil Men and Matters thereby would be discouraged. Who would not lend a helping-hand to this great Work? I have only a few Words to add, that the *Grievances* herein mentioned are not mine, but the Complaint of others, and that there is nothing of Offence given in these Sheets, or any ways intended by me towards you, Gentlemen, of the Law; but if the Abuse

buse is removed, the Law will be better established in Righteousness; by Weeding the Wheat it will thrive the better, and all good Men will rejoice and say, that the Law is their Delight and Counsellor: *Which is the hearty Wish and Desire of*

Your faithful and

Most obliged Servant,

PHILALEAS

THE
PRESENT STATE
OF THE
PRACTICE and PRACTISERS
OF THE
LAW, &c.

PHILALETHES.

GOOD Morrow, *Philonomous*, I was Yesterday at your House, but had not the good Fortune to find you at home.

PHILONOMOUS.

SIR, I give you Thanks for that Favour: I came from my Father's House late last Night, but am glad that I am so happy as to meet you this Morning; I hope nothing of any great Importance has happened to you since our last Meeting.

PHILAL.

NOTHING material; but I must discover to you the Uneasiness of Mind I labour under,

der, in that my Father put me to learn the Practice of the Law; for now I am sworn an ATTORNEY, and taken an Oath *truly and honestly to demean myself in the Practice of an Attorney, according to the best of my Knowledge and Ability*. I find, by daily Experience, such unequitable Proceedings in the Practice thereof, that a Man of my Profession can scarce act with *Reason and Conscience*, to do his Duty justly and honestly in that Station of Life, without doing some Act whereby he intends to over-reach his Adversary, advance himself, or to oppress his Neighbour; which verifies the Saying of the Poet:

*How desprate is our Fate,
What Hazards do we run?
We must be wicked to be Great,
And to be just — — undone.*

For an Attorney can't avoid being secret to his Client's Intentions, who ought to judge with *Reason* of the Justness of his Cause, whether it be good or bad; and to exercise that Rule of St. Paul, *to have a Conscience void of Offence*: which if he does not, is *abetting, encouraging, and assisting* the Party in an *evil Action*, and is as criminal in the Act as the *guilty Person*. For which Reason scarce one of our *Profession* can come within this Rule, but he must either *connive at Injustice*, or *starve*.

PHILON.

P H I L O N.

I DENY that; for, if you act according to the Rules laid down in the Practice of the Laws and Customs of this Nation, I am of Opinion it is a good Justification for you in point of Conscience before GOD and Man: But if you have any Exceptions to the Practice, or the Law in general, I should be glad of the Pleasure of hearing them.

P H I L A L.

I HAVE several, which I call Grievances; and the first is the *Length* and *Tediousness* of the Law;

THE second, the *Obscurity* of it;

THE third, the *Uncertainty* of it;

AND the fourth, the *Expensiveness* of it.

THE first is the Length and Tediousness of the Law, which arise from many Causes, and are generally the Consequences of the other three: For if we consider what a Gorbellied God the Law is swelled into, and the many great and INFINITE VOLUMES of *Glosses*, *Commentaries* and *Expositions*; stuffed with Variety of *Interpolations* and *Opinions*, which are as various as *Men's Faces* or *Fancies*; we shall find they have produced many unhappy Effects, which the Experience of almost every Man may judge of: And the Law is so very voluminous,

that it can hardly be read in many Years; and when read, it is *difficult to understand*. For to collect all our *Statutes, Laws, Cases, Precedents, Opinions* and *Judgments* thereon, &c. would be an infinite Task; exactly agreeable to what St. *John* said of the Miracles of our blessed Saviour, Chap. xxi. ver. 25. *That if they should be written every one, I suppose the World could not contain the Books that should be written* of the Laws of this little Nation, which might be comprised in a few Pages, like the Laws of the *Israelites*, or rather in our Saviour's Words, *That Love is the fulfilling of all Laws*; or that most excellent Golden Rule of Equity, DO AS YOU WOULD BE DONE BY: Which, if it was more practised amongst Mankind, *Thousands of Volumes must be turned into Waste-paper*, and then more of the Spirit and Life of Religion would reign amongst us.

ANOTHER Reason that makes the *Law tedious*, is the *Prolixity* of the *Pleadings*, the formal Return of *Processes*, the many Repetitions and Tautologies recited therein. I shall only instance one in the Practice; and that is first, *drawing a special Original, and Copy thereof*, then a *Copy for the Cursitor, engrossing thereof, Capias thereon, Copy to serve; drawing the same over again to declare, Copy to deliver,*
Entry

Entry thereof on the Roll: And in case for the want of the word AND, THE, THEN, THOU, or FORESAID, the Defendant should demur for some such Trifle or Mistake, or perhaps for none at all, merely to delay and vex the Plaintiff; then there must be six Copies more, one for the Plaintiff's Attorney, one for the Defendant's Attorney, and one for each of the four Judges; a Brief or Copy thereof for Council, and perhaps afterwards a Writ of Enquiry, where the same must be again recited, or a Record to try an Issue not demurred unto; and as many times more repeated, in case the Defendant for Delay should bring a Writ of Error. In short, it is endless, and almost impossible to tell the Infinity and Intricacy of the several Proceedings in the Law, and the Needlessness of so many Repetitions, which makes Justice expensive to be obtained, the Suitors timerous to obtain it, and the Law precarious, and uncertain at the best.

ANOTHER Reason that makes the Law tedious is, that Courts are often over-burdened with Business, for which Reason the Business is referred to some gossiping Person or another concerning some trifling Point in Practice, which may delay the Plaintiff a Term or two before he can proceed; that most Men would rather lose a

small Debt, or suffer Wrong, than seek his Remedy *by a Suit at Law*.

BUT before any of these Proceedings can be had, there must be *an Appearance for the Defendant*, either by *an Arrest* or *a personal Summons*; which is frequently prevented or delayed thro' Bribery or Corruption. But of that I shall say more hereafter; and when the Defendant has appeared, the Pleadings and Proceedings afterwards to a Verdict are tedious and expensive, especially if any special Matter or Point of Law should arise, which is waving the greatest Part of the Issue joined: For after the Issue is joined the Jury ought to find a Verdict according to the Evidence, and no special Matter to be reserved; for they are made Judges of the Fact, and ought not to stand on the left side of Number One as so many Cyphers that go for nothing. From an Observation I have made, *Gentlemen, you must find a Verdict for the Plaintiff*; where is the Plaintiff's or Defendant's Liberty of putting themselves upon the Country? where is their Oath of giving a true Verdict according to the Evidence? or if, after they have given their Verdict, the special Matter upon Argument before the Judges sets all aside, and the Party obliged to begin again? Nay, there are so many Cases where the Judges have divided in their Judgment, that no End at all has been
made

made of some Causes, so that the Suitor cannot obtain his desired Effect. And suppose the Court should give their Judgment, a *Writ of Error* is frequently brought for some small Mistake in the Entry of the Pleadings committed by the Officers of the Court (and not by the *Attorney*, who bears the blame;) and if, after the Judgment is affirmed, it is difficult to get Execution thereon to be alone, nay, if after all, the Defendant is at Liberty before Execution can be executed to bring a Bill in Equity to be relieved, wherein he will keep the Plaintiff in Suspence until he has obtained an Injunction, and in the end lose all, with a great Expence; so uncertain is Law, so tedious and expensive! Nay further, Men are frequently sent from one Court to another for Justice, pretending the want of Cognizance in the Cause for some Matter or another unforeseen: That it is difficult to know oftentimes what Court hath Cognizance of this or that Cause, which is a great Grievance, and wants a Remedy; for all which the Attorney is only blamed. But, to prevent a great many Inconveniencies that frequently arise, I would beg Leave to remind you of that good Advice of our *blessed Saviour*, in his Sermon on the Mount, *St. Matt. v. 25, 26. Agree with thine Adversary quick-*

ly, whilst thou art in the Way with him, lest thine Adversary deliver thee to the JUDGE, and the JUDGE deliver thee to the Serjeant (or Officer) and thou be cast into Prison. Verily I say unto thee, thou shalt not come thence till thou hast paid the utmost Farthing. And Luke xii. 58, 59. is more particular; but I think it should have been added, that the Debtor should not go into Prison, much more out of it, until he has paid his Commitment-Fees, &c. to avoid which, Ver. 57. of the same Chapter, the Question is asked, *Why, judge ye not of yourselves what is right?* Which is as much as to say, why do ye not call a few Friends together, unfold each other's Grievance: Let them reconcile the Matter, and if it cannot be done then, submit yourself to the Plaintiff before he deliver thee to the Judge: For if he sues thee at the Law, and get thy Coat, rather than go to Law give him thy Cloak also. For you ought to consider, that if you go to Law you have to do with a Set of Gentlemen (needless as they may seem to be in their Way) called *Cursitors, Filazers, Protonotaries, Clerks of the Declarations, Clerks of the Common Bails, Clerks of the Rules, Clerks of the Papers, Clerks of the Judgments, Clerks of the Docquets, Clerks of the Errors, &c. &c.*

&c.

&c. in each of the several Courts, as would fill a Volume *half as big as the BOOK OF MARTYRS*, to name their several *Offices, Functions, Fees* and *Employments*, who empty your Pockets to carry on the Authority of the Law. In short, it would make a Man sweat, to think how little they do for their Money, who sit at the Receipt of Custom only to take their *Fees*, set down how much they have taken, and for what; then tie up the Pleadings in Bundles, and so lay them by: And yet these are not the only *Gentlemen necessary* according to the Rules of *Law*; but in their Absence, in order to have *your Business dispatched*, they have *Secundaries, Clerks* and *Deputies*, that must be paid for *SEARCHES, EXPEDITION, &c.* which makes good the Saying in the *Beggar's Opera*, p. 34. *Money well timed, and properly applied, will do any thing.* For

*If you at an Office solicit your due,
And would not have Matters neglected;
You must QUICKEN THE CLERK with
a Perquisite too,
To do what his Duty directed.*

P H I L O N.

ARE not all these Gentlemen necessary, and their Fees settled by the several Courts?

P H I L A L.

P H I L A L.

THERE was an Enquiry about four or five Years ago into the Fees due to the Officers of the several Courts, and what Service was done for the same; but whether they will be ever rectified or reduced by an Act of Parliament, it is impossible to determine: But till that is done, and the several Offices reduced, you must not expect Justice to be administered at a cheaper Rate; for what with *Office-Fees, Stamps, Court-Fees, Council, &c.* near two thirds of an Attorney's Bill is clear Money out of Pocket. And then the Case stands thus: The Attorney calls upon his Client to pay all these Fees, he complains the Attorney has had so much Money at this, that, or the other Time; the Client does not know for what, or how it is applied, little considering at the same time how many Hands are to receive the same; nor is it my Business to enquire how or to whom it is afterwards distributed: Gone it is, and the Attorney (whom I should more properly call *the Porter of the Law*) has the least Share therein; though he is the first Receiver, he is the last paid, and very often never paid at all either by the Plaintiff or Defendant: For if the Attorney carries on a Cause, he must find Money for the *Offices, Court and Council*, get it how he can;

can; and nothing appears so heinous to a Client as to ask for Money before his Cause is ended, not considering how little he gets, and how much he is liable to lose. This Advantage and Satisfaction the Client hugs himself with, that if an Attorney delivers a Bill he can have the same taxed; and if a sixth part is taken off, he is liable to pay all the Cost, and shall not have Liberty to proceed depending such Taxation: Besides, he can bring no Action like another Person for his Bill under one Month after the Delivery thereof; and if any Items in the Bill should be any ways disputed, it may be delayed Term after Term before it is finished; and when the Client finds the Day of Payment near at hand, some evil-minded Project or another is contrived to bilk him: And so he loses all because he is debarred of the common Relief of having Bail for his Debt. No Encouragement or Method can be contrived for him, no Relief, but hard Usage, hard Names, and worse Punishment; a Canibal shall escape while the Innocent stands at the Bar: Virtue and Vice has changed Names and Places, he that is the richest and most politick generally gets the best.

P H I L O N.

I KNOW only but of one Act of Parliament (and that is *burying in Woollen*) but what
may

may be evaded: And as to the Act about staying a Month before you bring your Action, for your Bill might be very advantageous to you towards getting thereof, if the Judges would make a Rule that the Attorney should have Liberty to deliver his Bill when he pleased, and immediately procure the Judges Order where the Cause is depending to have the Party before the proper Officer of the Court, to tax the same in his or some Attorney's Presence, and that what he should allow to be forthwith paid. This is only doing what the Client ought to do within the Month, and would be very advantageous to the Attorney in coming at his Money upon more easy Terms than putting him to the Expence of a new Suit, disabling both himself and Client ever to go through the same; and in default of Payment of what should appear to be due, then the Party so refusing should and ought to be punished as a Delinquent with Cost, and not to be discharged until he has paid the utmost Farthing. I would therefore willingly hear what you can say, that the Law is expensive, precarious and uncertain.

P H I L A L.

IT is true, I did mention that the Law was at the best expensive, precarious and uncertain; and what makes me think so is,
that

that let a Plaintiff's Case seem never so good, he may miscarry altho' an Attorney may have done his Duty; but the Plaintiff does not consider that a Failure of Justice may often, nay oftentimes does proceed from directing the Verdict, at other times from the STRANGE OVER-BEARING of the Council, intimidating the Witnesses, the Ignorance of the Jury, who may be qualified by Law to be Jurymen, having the old Proverb on their Sides: But the Council must not undergo that Appellation, add to it what you please, because they act in a double Capacity for and against Rogues, and oftentimes make a good Cause a bad one. And so *è contra*, that a wise Man would rather lose his Right, than trust himself to the Judgment and Mercy of such Gentlemen; which makes the Law a Terror to Mankind.

PHILON.

CAN you think of any better or cheaper Way of obtaining Justice?

PHILAL.

YES, though I do not think that the Judges of our Courts at *Westminster* are any ways partial, negligent or remiss in their Duty; but I should like it better, that the two senior Judges of each Court should always sit together to hear Causes by *Nisi Prius*, and have a much greater Salary annexed

nexed to that they now enjoy, and that no small Causes should come before them. It was a good and noble Advice given to *Moses* by *Jether* his Father-in-Law, *Exod.* xviii. complaining, that *it was too much for one Man to sit in Judgment to hear all the Causes that should come before him*; and therefore he advised him, *Ver. 21. To provide amongst all the People MEN OF COURAGE, FEARING GOD, MEN DEALING TRULY, HATING COVETOUSNESS*; these were to be their Qualifications. *Verse 25. Moses* followed his Father's Advice, and chose Men of Courage out of all *Israel*, and made them Heads over the People, Rulers over Thousands, Rulers over Hundreds, Rulers over Fifties, and Rulers over Tens. *Verse 26. And they judged the People at all Seasons*; but they brought all the hard Causes unto *Moses*, but added to the Charges, *Deut. i. 17.* two other Qualifications, *That they should have no Respect of Persons in Judgment, but should hear the small as well as the great; nor fear the Face of any Man, for the Judgment was God's.* *St. John's* Advice was partly the same, *Chap. vii. 24. Judge not according to the Appearance, but judge righteous Judgment.* This shews the Dignity and Antiquity of Judges, and what a great Regard was had to their Judgment, because their
Judgment

Judgment was GOD's: And the JUDGES themselves, as you may find, *Numb. xi. 17.* *Were filled with the Spirit of God*; and their Creation by the Imposition of Hands, as we learn from *Peter Galatinus*, L. 4. Ch. 5. in his Commentary on the *Talmud*, *Institutio judicum aut manu fiebat, aut nomine tantum.* The Number of Judges were Seventy, besides *Moses*, as we find, *Numb. xi. 16.* and made but one College or Society, the eldest of whom was called *Ab-beth-din*, or *the Father of the Judgment Hall*; the *Nasi*, or Chief Justice, was the Principal thereof: And out of the whole Multitude, none but the Elder-Men, called *Zaken*, *Senex*, or Elders of the People, were chosen; who, like the Judges of our own Times, went Circuits, to ease the People from coming to the Great Hall of Judgment, as you'll find, *1 Sam. vii. 15, 16, 17.* *And Samuel judged Israel all the Days of his Life, and went Year by Year to Beth-el, and Gilgal, and Mizpeh, and judged Israel in all those Places; afterwards he returned to Ramath, for there was HIS HOUSE, and there he judged Israel.* Which Practice or Custom was continued down from that until the Time of *Herod*, as *Josephus*, *Antiq. l. 14. ch. 17.* mentions, and then they were destroyed to secure unto himself the Kingdom; and the Emperors of *Rome* followed the same Example, though Judge
Hale,

Hale, in his *History of the Common Law of England*, does not trace its Origin so far back. And as the *Law of the Jews* became partly universal to all Nations, so they became necessary for us to follow; for if you will but look into *their Laws*, and compare them with *our Statutes*, you will find the greatest Number of them *exactly agreeable to the Laws of GOD* delivered by *Moses*. How wisely or occasionally some others were made, to preserve this Nation and the People's Rights, is not my Part at present to determine; or how few of them are executed, or variously construed, must be left to the Judges, the great Explainers of *our Laws and Liberties*, whom I cannot behold but *with Reverence*, and are entitled to all *good Men's Prayers*, that GOD ALMIGHTY would so please to rule and guide them in this World, in the Dispensation of Justice, that at the great Assize, when the Secrets of all Hearts shall be opened, they may be able, with a just and clear Conscience, *to plead, plenè administravimus*. And although Justice does not always take place, it may not be the Fault of the Judges; for let them be never so *circumspect, mild, meek, prudent, wise and impartial*, nay, almost endued with all the Fruits of the Holy Spirit, a good Cause may be lost, by the *Council's brow-beating and over-bearing the Evidence, cavelling with one another in*
quoting

quoting Cases and Precedents, subverting the Meaning of their Words; and will not oftentimes let their Brother act the Part of a Gentleman to prevent the Subversion of Truth, unless the Judge exercises his Authority, and sums up the Evidence; not according to the bare Letter, but according to the Equity of every Man's Case, as the same shall appear to him from the Meaning of the Evidence. And the Jury (as I mentioned before) are made Judges of every Man's Case when the same comes before them to be tried; and therefore you cannot have Justice administered in a better, though perhaps you may in a cheaper Way, by *assembling* a few Friends and Neighbours together to decide the Controversy: For if you spend never so much Money at Law, perhaps to the Ruin of yourself and your Adversary, it must at last be decided by your Neighbours the Jury, and in the end not the better for your Obstinacy; only you have this Satisfaction, that you have got the best of the Cause, though in a great Measure to your Loss, for the Winner is generally a Loser. Therefore Mankind ought to judge among themselves what is right, and follow the Example of *Pomfret's Choice*, who says:

*Law-suits I'd shun, with as much studious
Care,*

As I would Dens where hungry Lions are:

C

And

*And rather put up Injuries than be
A Plague to him who'd be a Plague to me.*

ANOTHER Reason that makes the Law expensive, precarious and uncertain, is the great Number of Lawyers, Officers or Ministers of the several Courts, such as Counsellors, Officers, Attornies, Sheriffs, Under-sheriffs, Serjeants, Bayliffs, their Followers, Agents and Messengers, who make near one fourth part of this Kingdom: Add to these the Splitters and Cutters of the Law, no way qualified for their Employments, capable only perhaps to cast up Pounds, Shillings and Pence, draw a Declaration, a Lease or a Mortgage from an old Precedent; then commence Lawyers, set up Practice for sharp understanding Men, produce their Articles and Certificates, get sworn, which is easily done; they enter upon the Stage of Life, raw and unexperienced, until they have acquired their Knowledge upon the Ruin of Mankind. The Law was formerly an honourable Station of Life, but now degenerated: And it is pity any Person should be admitted an Attorney, until he has undergone a Scrutiny and Examination before a Jury of good experienced Attornies, who should examine his Abilities and Fortune, whether he was sufficient for that Purpose, and able to maintain himself without being guilty of base low-life Actions, which at present is the greatest Part of Business. But one of
the

the most dangerous Branches of the Law is that of *Indictments* and *Informations*, which are too much practised amongst the inferior Sort of People, and generally those of the lowest Life ; who are prompted to those irregular and extravagant Methods of Procedure, by a Set of *Creatures*, called *Sollicitors*, who have learned their Experience and Practice by having been too often Defendants at the Suit of their Creditors, and at their Expence, are become such complete Artizans, that they can judge well of the Force and Effect of Liquor, what Quantity thereof will raise or animate the Spirits of an ignorant Person, and, when thus animated, to be guilty of the most foul and blackest Perjuries : For they have no sooner raised their Spirits, but Fightings, Quarrels, and ill Blood immediately ensue ; then away to the Justice for a Warrant, or to get an Information : The Party is soon attach'd, and brought before his *Worship*, charged with the Complaint, and must immediately agree with the Prosecutor, find Bail, or go to Prison ; and, in order to prevent the latter, he immediately draws in two innocent Neighbours to be Bail for his Appearance the next Sessions to plead and try the *Traverse* ; in order to which, Money must be procured by that Time, if he SELL his Cloaths, or Bed, nay all that he has in the World, if he goes to the Parish afterwards ; for there is no Credit given in these

Cases, if he and his Family starve: And when the Cause comes to be tried, he must lie at the Mercy and Conscience of the Prosecutor, who has neither Cloaths or Habitation, four Days together, and never seen after the Defendant is acquitted to be made an Example of, or to have his Cost (*the Crown pays none;*) nor can you have a Lawyer to plead in your Behalf without Money, or very often with it, unless you give extravagant Fees for so doing: Have them you must. For the Harpies of the Law are like *Balaam's Ass*, *Numb. xxii.* that will not speak till the Angels appear.

SUPPOSE the poor Defendant should make an End of what he was *never guilty*, to avoid that Load of Expence which commonly attends trying of the *Indictment*; which oftentimes People in mean Circumstances are scarce able to support, besides the Loss of Time in attending the same, when they should be providing for their Families; therefore to avoid Actions being afterwards brought, *Releases* must be executed: *But there is no End* then, for these *Releases* must be proved at the Sessions, and the *Recognizances* withdrawn; and though you are not *guilty*, you must *plead guilty*, and submit to a *Shilling Fine*. And suppose, that either through *Necessity*, *Negligence* or *Ignorance*, thinking that all is at an End when the Releases are executed, away goes the
Defen-

Defendant, and his Bails Recognizances, into the Exchequer, there they remain perhaps three or four Years, or more, dormant, until they have got a few Goods about them, or able to change their Cloaths once a Week, the Knowledge whereof comes to these Cannibals of the Law called Bailiffs, who visit the poor Creatures with the horrible News of an EXTENT, at the Suit of the CROWN, for the Forfeiture of their Recognizances, by Means whereof they are at once stripp'd of ALL that they have been industriously getting for many Years; and the least Expence to get rid of those well-bred Gentlemen will cost six or seven Pounds each Person, besides the Extortion (of what they call Civil Coal) for the Officers Information or Delay of Execution: And if they have not sufficient to pay these Demands, a Nulla Bona is return'd against them of Course by the Sheriff, and upon that a Writ of Capias ad Satisfaciendum awarded, and thereupon cast into Prison, where they must remain without Bail or Mainprize, and cannot get out from thence until they have paid the utmost Farthing: Their Families, by Means of their indigent Circumstances, are sent to the Parish, or Work-house, to be an Incumbrance to their Neighbours, and through such trifling Neglects, and formal expensive Proceedings, Numbers of Families are inevitably ruined: And if Pro-

ceedings in those *inferior Courts* are so very *expensive* and *vexatious*, LORD! WHAT MUST THE CROWN-OFFICE BE? And it ought to be a Petition in every Christian's *Littany* to be delivered from it: And though this is not the Case of every Person indicted or informed against, it is the Case of a great many; and too many get their Livelihoods by *Informations*, *procuring Warrants* and *Indictments*, *spiriting up* and *carrying on the same*. But, in order to prevent the many Inconveniencies that frequently arise by Means of such vexatious and expensive Prosecutions, of suing for small Debts in *superior* or *inferior Courts*, as they are now established, and the Practice of them severally carried on, give me leave humbly to propose a Method (*if the Parliament would please to take the same into their Consideration*) of reconciling all Differences between *Man and Man*, and for the more easy and speedy Recovery of all *small Debts*; and that is, by establishing a COURT of CONSCIENCE in *every City and Market Town in England*, as the same is now practised in *London*, and other Cities, to determine all *small Causes*, whether they are *Actions of Debt, Trespass, Trespass on the Case, Assaults and Battery, Trover, Detinue, and all Tortious Acts*, &c. without burthening any of the superior or inferior

ferior Courts of Justice with the same; for the Expence of carrying on any of these Actions, either in the Sheriffs or Mayor's Court in *London*, generally cost a Defendant, if he is cast, seven or eight Pounds, and as much in any other inferior Court of Record, such as the MARSHALSEA COURT, WHITE CHAPPLE and CHINK, &c. without saying any thing about the superior Courts at *Westminster*, which many People are good Witnesses of the great Expence that arise there: And there is the greater Necessity for the Establishment of such Courts at this Time than has been known *this last Age*; for since *Pride, Ambition and Poverty*, added to the *Decay of Trade, heavy Taxes*, and an *expensive War*, prevail so much in this Kingdom, it would be one of the *justest Laws*, and the most extensive for the Ease of the Subject, that has been made for Ages past: It would be a Means to enable Mankind to pay their Rent, Debts and Taxes; it would reduce the Number of the Poor, who are commonly *vexatious and litigious*, and enable the *Parishoners* the better to provide for them; it would reduce the *extravagant Prices* that are generally paid for the *purchasing of Posts, Places or Employments* in the *Law*, and render *Justice reasonable and equitable*, and not so *expensive, precarious and uncertain*. Besides,

it would be a Means of *mitigating the Rigor of the Law*, by retrenching the Expence thereof, and giving Time for the *Debtor* to pay what should be decreed: *In short, it would be a Means of establishing that Angelick Love and Cardinal Virtue Charity, amongst Mankind, recommended by our blessed Saviour, and to do as you would be done by.* But how should such great Men *do as they would be done by*, when they perhaps give *six or seven thousand Pounds* a piece for their Places? Look but into the Trial of the LATE EARL OF MACCLESFIELD, and there you'll find, that almost all the Masters in the Court of Chancery gave for their Places not less than those Sums; what must the Profit of their Places produce, to get up the Principal and *Interest*, when they are not certain of enjoying such Place one Hour after? how can a *Protonotary* afford to give NINE OR TEN THOUSAND POUNDS for his Place, if the Profit of his Employment was not *vastly great*, unless it was *dependent* upon the Ruin of *Mankind*? Wise are the *Judges of our Courts at Westminster*, who have lately, and still discountenance *little Actions* being brought before them, by punishing the Delinquent till he has made Reparation to the injured *Party*: *Till that was practised, thousands of Families were ruined* by the Multiplicity of small Causes brought in the *superior Courts*.

If

If a great Number of these *expensive Places*, were vacated, by laying up the Money that is paid for the *Entry of the Pleadings* two or three Years, and the Money applied for the *buying them out*, the Suitors of the several *Courts* would have the *same Justice* for the *tenth part of the Expence*. Consider the *Variety of Courts* in this Kingdom, and the *Variety of Ministers (or Officers)* in each of them, what prodigious Estates they get by their Practice (and how little they do) to obtain them. Consider how one *Court* controuls the *Judgment of another*: The *King's Bench* oftentimes reverses the Judgment of the *Common Pleas*, and superintends most, if not all, the inferior Courts of Justice; the Court of *Exchequer* reverses the Judgment of the *King's Bench*; the Judges in the *Exchequer Chambers* reverse the Judgments of the *Exchequer*, and the *House of Lords* reverse their *Judgments*: And so in *Equity* the *Lord Chancellor* controuls the *Barons of the Exchequer*, the *House of Lords* controul him; and, though you think when you have obtained *Judgment in one Court*, that your Cause is at an End, you are mistaken; for the *Ending* in one Court oftentimes is but a *Beginning* in another, so tedious and expensive is *Law*. And

CONSIDER the great Necessity there is at this Time for the Establishment of such a Court

Court of Conscience throughout this Kingdom, as I have herein before mentioned; for how many *thousand* Persons in this Nation do not deal for more than *four or five Pounds, or less, per Annum*, with one Person? But a Man may deal for *a hundred* of those *small Sums* in a Year with divers, and if the *Debtor* is not honest enough to pay those small Debts without being sued, the Creditor is in danger of losing his Money. For suppose an Action should be brought for one or more of those Sums, the Creditor *runs great Risques* in recovering; for the *want* of such *Proof* as the *Law requires*, because he is *principally* to prove the Demand by some Person *no ways interested* in the Cause; and perhaps he has no Proof at all, because the Goods sold, or Work done, &c. was done without the Privy of any other Persons than the Debtor and Creditor: So that a Trader ought at all Times, if he gives any Credit, to have a Porter, or some other Witness at his Back to prove the same, otherwise he shall not be entitled to a Recovery, let him spend never so much Money; for the Expence of recovering three or four Pounds, is equal the same as though it was three or four hundred (the Fine to the *King* only excepted :) What can the *Creditor* do? He is no *Evidence for himself*, and he must either sit down contented with the first Loss, or spend
three

three times more Money than the Debt to obtain Payment; besides, when he obtains Judgment, the Court gives him no Cost, he must be at the Expence himself to have Execution thereon done: For what with the *Execution, Warrant, Levy, Poudage, Appraising, &c.* his principal Debt is devoured, and a great deal more Money out of Pocket, especially if the Defendant should abscond for any Time to avoid being taken in Execution: If he has no Goods or Chattels to make Satisfaction, then there must be *Continuances entered* upon Record to keep the Judgment on foot, *Term* after *Term*, or *Scire facias* to revive the same; in either of which Cases it is very expensive, and no Allowance made to the Plaintiff for so doing, unless the Defendant appears and pleads to such *Scire facias*; and in the end perhaps the Plaintiff is not a Jot the better for all the Money he has expended, but on the contrary a great Loser. In order that the *Crown* should not be a Loser by the establishing of such Courts, to reconcile and determine all small Differences in a summary Way, if a Six-penny Stamp was to be impressed on all Complaints or Summons that should issue out of those inferior Courts, the Government would be a Gainer thereby many thousand Pounds *per Ann.* for no inferior Court, where small Actions are brought or determined for Debts, Trespasses,

passes, &c. under forty Shillings, has any Stamps at all, it would be a Means to increase the Stamp-duties, and at the same time ease the Subject of that Load of Expence that generally attends the Practice of the inferior Courts, much more the superior ones: And that the Attorney should have no Occasion to complain of the small Profit arising thereby, he ought to consider, that where he has one Cause now, he would *then* have *ten*, and the several Suitors not at a quarter of the Expence that they are at in the inferior Courts. *A hundred of those little Disputes may be determined, as in the City of London twice a Week, in two or three Hours, by a few Neighbours FEARING GOD, HATING COVETOUSNESS; and that the Proceedings after the Service of the Plaint or Summons should be short, not above two or three Lines, entered in a Book kept for that Purpose, containing the Nature of the Action, whether it be Debt, Trespass, Case, Assault, &c. As for Example, in Trespass, A. B. by C. D. his Attorney complains of E. F. for breaking down his Hedge, and suffering his Cattle to enter his Close or Meadow, and eating up his Grass to his Damage, fifteen Shillings, as the Nature of the Case is; which Fact he proves upon HIS OWN or Neighbour's Oath: And the Commissioners appointed*

to

to hear such Complaint or Summons, shall determine the same without a Jury (unless the Party Defendant require the same at his own Expence) which Expence shall not exceed five Shillings for the Jury and summoning them, which shall be paid into Court before hand; and when that is done, and the Commissioners have given Judgment, they are to limit the Time for the Payment of the Damage, or by Instalments, according as the Circumstances of the Party transgressing shall be able to do: And that such Judgments, Orders and Proceedings should be made Records; and every Term transmitted to some or one of the Treasury's of the Courts at *Westminster* to be filed, in order for the Courts there to have Cognizance of such Orders or Decrees that have been made at the several Courts; and that the Courts at *Westminster*, especially the Court of King's Bench, upon the Records being certified to them, to have Power, in case the Defendant absconds out of the Limits or Jurisdiction of the said Court where Judgment was given, to issue a *Testatim Capias* against the Defendant, in the same Nature as the Ordinary does in the Spiritual Court, by *Significavit*, to obtain a Writ of *Capias Excommunicato Capiendo*; so that the Courts at *Westminster*, upon such *Certificate* or *Signification*, may issue out Process from their Courts into any Jurisdiction or Place
what

whatsoever, remote from the Jurisdiction of the Court where Judgment was given, or such Order made; and that nothing should abate the Plaint in any Case or Appeal from the Judgment of the respective Courts, and that no *Writ of Error, audita querela, &c.* or other Process to be brought in order to vacate such Order or Decree; and that in all Cases whatsoever the *general Issue* should be pleaded, and the Court left to consider of the special Matter of Equity or Custom, if any such should happen to arise before them, the *Equity* and *Reason* of every Man's Case to be the only Guide of their Judgments, not according to the bare Letter of the Law.

AND, as I have mentioned one way how small Debts may be recovered at an easy Expence; such a Court should not be confined to such Determinations only, but that they should have Power to determine all *Tortious Acts, Assaults, Trespasses, &c.* without burthening other Courts with the same; the doing whereof, will be easing the Subject of that Load of Expence which commonly attends the Practice of the inferior Courts, to the Ruin of many Families. A Court thus established in every Town, would be of universal Service, not only to the Poor, but likewise to the Rich: Lord, says one, I cannot go to Law with Mr. * * * *; he is a *great Man*, worth a great deal of Money, and I am not able to stand him: Another, that

that he is intimate with Justice ****, if I complain to him I am sure of being snub'd, or aggravated into some inadvertant Expression ; so that a *Mittimus* is immediately ordered to carry *me* to *Bridewell*. *Oh Sir ! Lord Sir ! for God's Sake !* (says the poor Person) don't send me to Prison, for if you do, I have five small Children that must go to the Parish. — Then says the Justice, *ask my Brother Pardon*. This must be complied with, and the Injury put up ; and all that was said was, that his Worship received the greatest part of the Conviction-Money for procuring several Persons to be convicted for the High-Way, merely to save the Life of him that was *guilty*, and the Guilty to impeach the Innocent, to save his own Life. An Instance of that I once saw and knew, but I have no great Reason to complain of all of them for the unjust Practices of some ; for I know a Gentleman that has been in the Commission of the Peace for many Years, and did much Business during that Time : He assured me that he never took any Money either for an *Affidavit*, *Mittimus*, *Discharge* or *Recognizance*, or for any other Act done ; or *suffered* in the *Execution of his Office*, which made him *universally beloved* : But this Justice of the Peace *does not live in the Liberty of Westminster in the County of Middlesex*. And I am told, that every Gentleman that has the

Honour

Honour of being in the Commission of the Peace in the County of *Kent*, never take any Fees at all; and were always distinguished, by imitating the Rule laid down before, to be Men of *Courage, fearing God, hating Covetousness*: Some of them, I know, have read the Fifteenth Psalm, and made that their Plan and Form of Conduct, in order to avoid the Maledictions of the Hundred and Ninth.

AND in order to prevent all frivolous and vexatious Prosecutions and Suits whatsoever, whether *Actions of Debt, Case, Indictments or Informations*, the Probability and Circumstance of the *Plaintiff, or Prosecutor's Complaint*, should be always upon Oath to ascertain the Fact complained of, before such *Action or Prosecution* should be commenced; and that such Oath should be always drawn up in Form, and then sworn, and every Term transmitted to a proper Place kept for that Purpose at *Westminster*, to the end that every Person *aggrieved* by such *Oath* may have Access to the same *gratis*, in order to see the Nature of the Complaint laid to his Charge: For all Oaths or Affidavits made before Justices of the Peace out of the Session, and not recorded, signify almost as little as singing Psalms to Horses; for what People swear is scarce so much as mentioned by the Justices, that Oath has been made before them of the
either

Facts mentioned in the Warrant : And if the Justices of the Peace were to have no Fees, either of the Prosecutor or the Defendant (but to be paid by the Crown) there would not be so many Prosecutions as there are: And such Affidavits should not only be sworn in Form, as I have before mentioned, and recorded, but they should be sworn in the Presence of some, or one *known reputable Attorney*, who shall attest the same in the Nature of a *Notary-Publick*, employed to draw such Affidavit or Information; for the Attorney best knows where to find his Client, and can give some Account how he came recommended to him, in order to find him out if he swear false: For how should the Justice know the Name, Place or Employment of every Person that comes before him to make such Affidavit. They who are thus evil-minded, will To-day swear by *one Name*, To-morrow *by another*, before another Justice; so little Regard is had to the Third Commandment, the Solemnness of Oaths, and the Penalty arising therefrom. And all this proceeds from its being frequently reported and believed, that an Oath made before a *single Justice* of the Peace out of Sessions, a Person cannot be indicted for Perjury on the same; because the Matter complained of was not sworn to in a Court of Record. But the Oath sworn to, *attested and recorded,*

D

ed, as above-mentioned, will make many more cautious, than now they are, how they swear it, because the Perjurer would be the more easily detected; and the Attorney who has taken the Oath before described, justly and honestly, demeaning himself in his Practice, will be ashamed to appear in a foul, base Action, or be guilty of Perjury himself, or of countenancing others in it: Not that I am acquainted with any such, and hope there are none that make it their Practice.

THE *Civilians* have an *excellent Method* in this Particular, *viz.* that all Affidavits are *attested by a Notary Publick*, and the same reduced into what they call an *Act of Court*, are commonly filed by the proper Officer, and the *Doctors* or *Surrogates* are the *inferior Judges*, that order or decree in Matters of Course: So that no Act is done without the *Cognizance* of one or more Persons; so excellent are the *Civil Lawyers* in taking care of *Peoples Consciences*, that they may exercise the same, according to the Rule of *St. Paul*, *To be void of Offence towards God and Man.*

I WILL give you an Instance of the Necessity of such Proceedings, because I knew a Bankrupt who (as I am informed) took this Method of obtaining his Certificate: The just Creditors having a Suspicion (and not without Ground) of his great Concealments,
could

could not detect him in his Villany, after he had made several Notes payable to divers Persons, procured them to be proved before the Commissioners in the said Commission named and authorized; nay, there were some Bond Debts of the like Nature proved, and never a Penny Consideration paid for either: The Commissioners could not refuse them because they were sworn to, and proved according to the Method of their Proceedings; so Matters went well for some Time: But the Bankrupt still wanted Number and Value against his just Creditors to obtain his Certificate; and in order to do that, he went into the Country, and found out *Commissioners*, or *Masters extraordinary*, empowered to administer Oaths in the Court of Chancery, where he was not known, and got drawn Affidavits in different Names, and subscribed them with different Characters, and swore them all himself before different Masters, some in Town, and some in the Country: The Gentlemen before whom they were sworn could not imagine the Fraud, but that it was the real Person's Name who swore them; and suppose they had, consider what would have been the endless Expence of detecting it: And all this past undiscover'd for the want of a *Notary or Attestation* to them. These Affidavits were transmitted to *London* to his Agents, as bad as himself,

who got them exhibited to the Commissioners, and the Bankrupt obtain'd his Discharge, who probably at the Time of the issuing of the Commission was able to divide ten or twelve Shillings in the Pound to each of his *just Creditors*; and by Means of so many *spurious Affidavits*, there was not paid above ten Pence, and perhaps a great part of his Estate and Effects embezzled, or otherwise concealed.

ANOTHER Instance was of a late famous Practicer (who made a great Figure in the World) who used that Method of making Affidavits in the Country; and if a Number of Affidavits were at any Time made against him, what with their Length and Number, upon a Motion generally got the best, so necessary it is to have Affidavits better attested in the swearing of them; and that a strict Scrutiny not only should be made in those Cases, but likewise into the Character of the Persons who frequently give Evidence upon Trials, to avoid any Imputation being brought upon the ATTORNEY, whose Conduct is often called in question: For let the Fault be whose it will, he generally bears the Blame; the doing whereof would prevent many Perjuries, and be a Means of detecting them the easier that should be guilty of such licentious Practices. And it is pity but that some cheap and reasonable Way could be devised

devised to make Prosecutions of this Nature less expensive, for many Perjuries frequently go unpunished, whereby Families are ruined, by reason that the Length of the Indictments, and the Expence of drawing them, as well as the Uncertainty of them, and oftentimes for want of Proof miscarry.

ANOTHER Method might be devised, and more easily prosecuted, in relation to Indictments and Informations, than what is now practised, of indicting People when they know nothing of the Matter; for the Jury never hear but one Side when they find a Bill, whether against a common Scold, Rioters, Assaults, &c. and that is by summoning the Offender before the *Grand Jury*, to shew Cause why an *Indictment* or *Information* should not pass against him for this, that, or the other Crime, and to give the Party offending a Day for that Purpose, in the same Manner as the Court of *King's Bench* or *Common Pleas*, or any other Court does, before the same is absolute against them; the doing whereof would save many Families from Ruin (I do not mean that this ought to be the Case in Felonies) but only between Man and Man: So that, were such a Court established as I have herein before mentioned, and each of the Commissioners appointed to sit weekly to determine all small Causes, it would be a great Ease and Satisfaction, I dare say, to

all Mankind in general in this Kingdom; it would be a Benefit to the Rich, but especially to the *Poor*, in easing them of that Load of Expence they are generally at in trifling Prosecutions; in the doing whereof, *the Decision would be quick*, not waiting for *Terms or Sessions*, the *Pleadings short*, the Attorney's Fees *small and many*, and no *Council* to be employed in such *trifling* Prosecutions: And if the Prosecutors Plaintiffs or Defendants, should be minded to have *Council* to plead their Cause, it should not be allowed to either of them in Cost; for Attornies are not *generally so ignorant* as the World take them to be: It is they that instruct the *Council*, and teach them their *Lesson*, and they best know their Client's Case; and if the Client speaks the Truth upon his Oath, of which the Court will best judge, the Commissioners appointed to hear the same will soon determine the Variance, and at once end the Strife, without having Resort to other Courts for Justice.

MANY have been the Attempts of our Legislator to make *good and just Laws*, for the Benefit of *Mankind*; but how easily are they evaded. If a Law was to be made this Sessions of Parliament, that no Action should be brought in any of the *superior Courts* for any small Debt, it is but declaring; for large Sums brings them within the Dignity of the Court: If you recover but
a small

a small Matter, it is attended with extravagant Cost; and if you complain to the *Courts*, in that Case *there must be Motions, Rules, Affidavits, Council, &c. which itself is too expensive*; but Money must be found to shew Cause, if they should part with all they have in the World to procure it: Some are not able to bear the Expence, but they must bear it or suffer. Many of these Instances are almost within the Knowledge of every Man, and many I could mention of my own Knowledge that have been ruined by that Means; and all this proceeds from the want of such a *Court of Conscience* every where: If such a Court was every where established, it would in Time lessen the *Number of Council, Attornies and Sollicitors*; it would reduce the *extravagant Price* that is generally paid for Places in the Law, so as to be *little worth*. And if the GENTLEMEN of the Law, who sit at the Receipt of Custom, would but do their Duty in their several Stations, the Attorney would be at far less Trouble than he is at now: And pray give me Leave to ask this Question, by what Authority does the Sheriff take the Poundage under an Execution? You will no doubt tell me, that one Shilling in the Pound, for every Pound levied by him or his Officers, is grounded on a good Act of Parliament: Admit that, is not that Money paid for the *Warrant*,

Appraising, Levy, Bill of Sale, Possession, &c.? No; you must pay for the doing of all that besides, or you will never have your Business done; unless you grease the Wheels well they will not go, *so expensive is Law*; and yet I find it thus daily practised. I should have named the Philazer first, for he is grown so exceeding idle, that if you go for a Writ you must dance after him several Times before you have it, unless you do it yourself, in the mean time the Defendant is gone. In the next place, the Sheriff is to grant a Warrant, then the Officer must have the Management of that; perhaps he can't see the Defendant till *Sunday, then comes the Civil Coal*: But that is only where the Under-Sheriff's Clerk has not sent Word before-hand; for that is easily and too often done, by *describing the Place, and Addition of the Person* [Defendant] *in the Writs*: That is delayed Term after Term before the Process can be executed, and during that Time the Defendant may have paid as much Civility Money as would pay half the Plaintiff's Debt. Then give me Leave to ask, what the *Protonotaries* do for the Money you pay for the Entry of the Pleadings to them? They take the Money, and you do the Business, tho' they are paid for doing it; and if the least Fault or Mistake should happen by making such Entries, they never

ver refund; but the Attorney bears all the Blame for doing what he is not obliged to do, and oftentimes ordered to pay the Cost for such Mistake: So that, if every one was but to do his Duty in his Station, the Attorney would not be so much censured for others Faults as he is. If an Attorney, whose Practice is next Kin to *Porterage*, was but to be paid what he justly deserves, it would be some Encouragement: But he does all the Business, and other People, such as the Officers, &c. take the Reward. How expensive is it, after a Plaintiff has obtained Judgment by default to execute a Writ of *Enquiry* of Damages? there must be had the *Duty*, *Parchment*, *Signing*, *Sealing*, *Engrossing*, *Subpenas*, *Tickets*, *Service*, and what not: Besides executing the *Enquiry* by the Sheriff, the Plaintiff must pay one Pound ten Shillings and upwards; when all these unnecessary Expences might be saved, if the Plaintiff, or any other Person, was but permitted to make an Affidavit in Form, and annex the same to his *Interlocutory Judgment* of the Damages sustained, then tax the Cost, and take out Execution: This would be an easy, cheap and expeditious Way of obtaining Justice, at less than half the Expence the Suitor is at in that Case. And after all this is done, the Plaintiff perhaps not a Penny the better for such a Suit; for before he can obtain

obtain *Execution* to be executed, a *Writ of Error* is brought that costs thirteen Shillings and Sixpence, sometimes one Pound, then two Pound, and half a Crown for the *Allowance* of it, and the *Certificate* that the same is allowed; then three Pound more for *transcribing the Record*, with a Multitude of other Items, besides spinning out three or four Terms before the *Judgment* can be *affirmed*: And by such Time as all these Proceedings can be had, it usually costs both Sides near thirty Pounds, and sometimes more, *so expensive is Law, so tedious and uncertain.*

P H I L O N.

YOU have often hinted, that the Law is a grievous Practice, and wants a Remedy; pray what do you look upon to be a Grievance?

P H I L A L.

I CALL that a *Grievance* which is objected by some to be a *Rule* or *Practice* in the *Law*, that is, either *Evil* in itself, or doth oftentimes prove to be an *Evil*, and that wherein a better *Rule* or *Practice* may be found out and used; or the want of a *Rule* or *Law* that may *serve to prevent* or take away some *Evil*, that is or may be, or to introduce some *Good*; or the departing from, or Neglect of, the *Execution*
and

and *Practice* of a *Rule* or *Law* that is *good*. Some Rules and Practices I have already and shall hereafter mention, that are really Grievances, not in the Law, but in the Practice of it; and it is scarce known, two Terms together, what is Law or what is Practice: As to my own part, I will study no more of either; new Faces make new Laws, new Laws occasion new Rules; and if you are not constantly attending the Observation of them, every Thing will appear irregular: What is Law in one Court, is not all Law in another; if it was, *why should one Court reverse the Judgment of another?* Why cannot the Law and Practice be every where the same? If *Solomon* was alive he could not know it all, though he has told us, that *there is nothing new under the Sun*: If he was living now, he would find many Things *new*, which neither he nor our Fore-fathers apprehended; if they did, why were not the same Laws made Centuries ago that are made lately? I cannot account for this any other ways, than by attributing it to the Licentiousness and Degeneracy of Mankind in our Days, to what it was in former Ages. Besides, “there are some Things that are yet not
 “ in the *Practice, Theory* and *Principles*
 “ of the *Law* which want Amendment,
 “ and others that are expressly against the
 “ *Practice, Proceedings* and *Execution*
 “ of

“ of the *Law*.” There are some Things used, forbidden by the Doctrine or Rules of Law, or they are against the *Theory* and *Practice* of both. In these Cases what can we do? Our *Judges* observe *Grievances* as often as they come before them, and endeavour to redress them: And it is impossible to rectify all Mistakes at once, or for me to write what might be said thereon. Some few Omissions in the Law I have reserved for the last of our Conversation, which I will leave with you in Writing to consider.

I MENTIONED before, if you remember, that the Law was *tedious*, *expensive* and *uncertain*; and that frequently arises from long and special Pleas, which must be always signed by *Council* (except some few.) But if the GENERAL ISSUE was to be pleaded in all Cases whatsoever (the same as it is in Felonies) it would be much *more easy* for the Subject, and *less expensive*. And the Method I would humbly propose in so doing would be, to give a Note or short Memorandum to the Plaintiff's Attorney, at the Time of pleading of the *special Matter*, such as he intends to give in Evidence at the Trial of the Issue, to be joined between the Parties, whether it was an *Act of Parliament*, *Release*, *Satisfaction*, *Coverture*, *Custom*, &c. or any thing else that might have been *pleaded in Bar* or
Abate.

Abatement to the Plaintiff's Cause of Action; the doing whereof would be more effectual for all Parties, and less dangerous. I have seen so many of these Instances upon the trying of Issues, after the spending of a great deal of Money in making up the Record, summoning the Jury, seeing Council, &c. something started up, though never so much as thought on before, or if premised, the same had been kept in reserve until that Time: So that the Plaintiff has been oftentimes *non-suited*, which might have been avoided, if such Note or Memorandum had been given with the Plea, of such Specialty so intended to have been given in Evidence; and that the General Issue, in all personal and mixed Actions, should be in these or such like Words, *That the Plaintiff hath no such Cause of Complaint, as in his Declaration he has alledged.* And the Reason why such a Proceeding would be of great Use is, that the Plaintiff would be in less Danger in his Suit; because the Nicety of Pleading, and the Variety of Passages therein, would be all taken away, and the Officers of the Courts, whose Business it is to enter them, be less liable to those Mistakes which sometimes they have committed: Let them be never so careful in so doing, 'tis plain that a good Cause has been oftentimes lost, an honest Man undone, and without a Remedy: But if the Pleadings

were

were *short* and *certain*, the *Passages* of the *Procefs* in Suits not so many, there would not be so many fatal Mistakes in the Law.

ANOTHER Reason that makes the Law *tedious* and *expensive* is, the Distinction of Courts in Opposition to *Law* and *Equity*, which are the Fruits of many Suits: A Court of *Law* will tell you, that it is a Matter of *Equity* rather than *Law*; and that such Court has not *Cognizance* of this or that: A Court of *Equity* will *oftentimes* direct an Issue at the *Common Law*, alledging, that the Matter is not cognizable before them; and that after the Issue is tried, the Parties must resort back again to Equity for further Direction: Would it not be much more easy to the Suitor, that the Judge or Judges of such Court of Law or Equity, should always have Liberty in such Cases to ask to their *Assistance* a Judge of the other Court, and so determine the Matter at once whether it was *Law* or *Equity*, and the same ended or determined in the Court where the Cause began? This would still be an Ease to the Subject, and an End at once made of the Suit.

LET us now enquire how the *Sheriff* behaves himself after the Plaintiff has obtain'd his *Judgment to get Execution thereon executed*, in the doing whereof the Plaintiff is greatly delayed; and when the *Sheriff* has levied the Money, the Plaintiff or his Attorney

Attorney can scarce get it of him: For he will, if he please, make the Plaintiff stay a long Time for his *Return*. If he has taken the Defendant's Goods in *Execution*, he will frequently put the Plaintiff to the Expence of a *new Writ*, called *Venditione exponas*; then you must wait the Return of that, and will not oftentimes pay the Money at the Time appointed, but put the Plaintiff off until the Sheriff is compelled by Rule of Court so to do, and cannot have of the Defendant or the Sheriff any Cost by reason of such Delays: How often do they make *frivolous* and *false Returns*, and put the Plaintiff upon a *new Suit*, especially if he has levied a large Sum of Money, or taken the Defendant and his Goods upon a *Capias Utlegatum*, the Interest of which very often will pay for defending the Suit with a considerable Overplus. And these are not all, or the only Steps that are taken in such Cases; but the OFFICER, who has the Execution of the Process, generally plays his Game up first, and is very often in Fee with *half his Hundred, or Liberty*, and many of them with half a County: For I have known an Officer get fifty Pounds as his CHRISTMAS BOX by small Sums, and some Persons, whom he knows to be in unfortunate Circumstances, *pay quarterly*; and if they refuse so to do, are immediately brought up-
on

on *Juries*, unless they pay to be excused; which is another Method of impoverishing them: But if none but *Men of Fortune* were to be called upon such *Offices*, who can best spare their *Time* and *Money* to serve their *Country*, it would be giving the Tradesmen and Farmers a better Opportunity to pay their Rent, Taxes, &c. and the summoning Officer prevented from being so *oppressive* and *extortionate*. How can Officers build Houses, and get such good Estates, as many of them do in a short Time, unless they have some extraordinary way of getting them? You will tell me perhaps they are *necessary Evils*; necessary they may, but good they ought to be: And if the Sheriffs were upon Complaint to be *amerced* for every Act of Violence, Oppression and Extortion committed by their Under-officers, Mankind would be less liable to the many Misfortunes that by the want thereof are frequently brought upon them.

ALL Laws that are from time to time made, were most certainly made for the Preservation of Mankind in general, and well intended; but the *Tediousness*, *Expensiveness* and *Uncertainty in the Execution thereof* is not their Fault, or the Fault of the *Judges*, but in the Practice of the *Law*, and the needless Use of so many Offices and Officers, obliging the Attorney to run half over the Town, from one place
to

to another, for *one to sign this, another seal that, another to enter it, another to take it, and to put it on a File*: Why can't all this be done by one Person, if it were necessary, and in one Place, like the King's Bench Office, where almost all that is necessary in the Law to do in that Court is done? But the Clerk of the Judgments has lately raised his Price in signing Interlocutory ones to six Shillings and Sixpence, and he does nothing but enter the Cause in a Book, marks the Margin of the Declaration with an unintelligible Term of *Enter Rule*; for what or how it is reckoned, I can't tell: He seldom used to take but three Shillings and Sixpence, how the Case is now altered must be left to the Gentlemen of the Law, who sit at the Receipt of Custom. Were *CORNELIUS AGRIPPA* now alive to review his Vanity of Sciences, what do you think he would say of the *Law*? In truth I can't tell which part thereof he would fix upon, whether the *Statute* or *Common Law*, or *Equity*, the *Civil Law* or *Canon Law*, &c. it would be a greater Task, than what he has attempted in that Book.

I THEREFORE intended to have given you an Account of the Number of Offices and Officers of the Courts of Law and Equity, together with the Civil and Canon Laws, petty Courts in and about *London*;

E

but

but that would be a Subject fit for a large Volume: And as most of them, by *long Experience*, are well known to the Attornies, I shall wave that, and peep into the Courts of Equity, whose *Processes* are reasonable enough. But let the Cause be never so short, if an Account is directed, it is well if you get through it for two or three hundred Pounds, and be two or three Years a spending it. And first, let us look into the Six Clerks Office, with whom all Bills and Answers are or ought to be filed. It is true, they are called the *Six Clerks*, but they have each of them ten others under them who copy those *Bills* and *Answers*, for which you pay ten Pence *per* Sheet; every Sheet does or ought to contain *ninety Words*, and some of them make *large Volumes*. It is true, the *Six Clerks*, or the *Sixty*, do but very little for their Money; most of them employ some of the *ragged Regiment* to do all the slavish Part, and their Masters take Care enough to set down what they have done: But how or to whom the Fees of this Office are divided, is best known to themselves. Step out of that over the way to the Examiner's Office, there you pay one Shilling and Two-pence *per* Sheet, for what the Clerk in Court does for ten Pence: And frequently twenty POUND is paid at a Time for Copies of

of the Interrogatories and Depositions. I have nothing to say to the Council, when the Cause comes to be heard, how little they do for a twenty or thirty Pound Fee: The next place you must go to is the Register to draw up the Decree, and, in order to spin the Length of that out, you must leave a Brief of all the Proceedings, and Money for the same; and in about three Months afterwards you get it, and therein are recited all the Bills, Answers, &c. and if there are many Parties, each perhaps take one, and pay large Sums for doing the same, when the Decretal, or ordering Part thereof, is all that was *materially necessary*: After that it must be entered in a Book, there to be kept as of Record, which, if only the ordering Part of the Decree was to be mentioned, it would not amount to the *one tenth part of the Money*; and though the Cause is determined in favour of the Plaintiff or Defendant, as one would imagine, and almost at an End, it is but in fact just begun; for now comes on a Load of Expence in attending the Masters, and obliging their Clerks: And if you are not very profuse in your Warrant, Charges and Discharges, nay oftentimes litigious to increase the Business, you will be certainly remembered when your Bill comes to be taxed; for if once the Clerk takes it in his Head, that you have

bilked him or his Master of one Fee, you will be told as I was lately, by one who thinks himself A VERY HANDSOME FELLOW, that the Master would remember me when my Bill came before him; which I afterwards found to be true, for he would not allow in my Bill what I actually paid him out of my Pocket, because the Clerk denied it, nor yet the Fees that were justly due to me that he allowed to other Persons: Another Reason was, that my Bill was very nicely carved, the opposite Party came usually in a Coach or Chariot, though neither of them paid for: His usual Method when he entered the Chambers, was with a low submissive Cringe, or *Bow of Adoration*, adding, *Sir, I am your most obedient and very humble Servant*; for *Address* is a great Matter in the Law. Therefore take my Advice, whoever ye are, my Brethren, that shall hereafter happen to go to that Place, be sure you *cringe, bow, submit* yourself in the most *humble Posture imaginable*, not forgetting to come in a *Coach*, with a *fine Coat, a laced Waistcoat, black Velvet Breeches, Silk Stockings* with *high Clocks, large Buckles* set with *Bristol Stones, a laced Hat* under your Arm, and a *Footman* to bring your *Cloak*. But you must first get in with the Clerk; tip him a Guinea, you are well recommended, and your Business soon dispatched: Now
 and

and then take the Clerk home with you to Supper; and by all Means when you attend, don't forget to say, *upon my Honour* it is so and so; I would have waited upon you sooner; but my Lord * * * sent his Servant to speak with me on Matters of great Importance: You would not imagine what Influence it makes, and gives a surprising Turn in the Matter then depending; and oftentimes it has gained more Weight in a Cause than an honest Man's Oath. And thus you may perceive what Money and fine Cloaths does, it often hinders Justice taking Place by having Respect to Persons. And these are not the only Hardships that Mankind labour under to obtain Justice; but I shall, by way of Conclusion, enumerate many Cases which seem Hardships in the Law, over and above the *Expensiveness*, *Tediousness* and *Uncertainty* thereof, which I have endeavoured to make appear, though it is not the tenth part of what might be said thereon. I should have said something about the Report-Office, and the great Sums paid there for filing them, and the Tediousness of Exceptions thereto, and the Expensiveness of hearing them; and perhaps after all, the Matter must go back again to the Master to rectify: So that it is an idle Question for Clients to ask when their Business will be done, or at what Expence; a Man may guess at the Time within a Year, or

perhaps within a hundred Pounds what it will cost to go through it, *so expensive and tedious is Law*. If Orders and Decrees in the Court of Chancery were but drawn up in that concise Form as they are in the Court of Exchequer, very little more than the ordering Part being therein mentioned, and Reports contracted, Justice may be obtained at a much cheaper and expeditious Manner; and if the Clerks in the Exchequer were but as industrious as the Clerks in Chancery, it would make the Business and Practice of the former much more expeditious than it is, though their Method of Practice is partly the same; and therefore I must at present take my Leave, and let the Courts of Equity and Good Conscience, as long as they please, restrain and over-rule the Rigor of the Common Law. I would have mentioned somewhat concerning the Ecclesiastical Courts; but I think that the Proceedings there are far more expensive than those before mentioned, and so God be with you.

P H I L O N.

PRAY stay a little longer, and give me your Opinion concerning an Act of Parliament, entitled, *An Act for the Relief of Debtors with respect to the Imprisonment of their Persons*; what Benefit the Plaintiff

tiff or Suitor has in that Respect, how it is construed, or for whose Benefit was it intended ?

P H I L A L.

My Time is but short, otherwise I would explain it to you fully, according to the true Intent and Meaning thereof, and shew that it was well intended, how it has been explained, and what Objections arise from such Determinations; but that would be a Matter too copious for this present Occasion, and therefore I shall only slightly touch upon it. That Act was most certainly intended for a general Relief for all Mankind whose Debts did not exceed in the whole the Sum of One hundred Pounds, let there be never so many to make up that Sum; but before any Relief can be obtained thereon, the Plaintiffs must proceed to ascertain their Debts by proceeding to Judgment: For neither the Plaintiff or Defendant can have any Benefit thereby till the Defendant is charged or taken in Execution, and he thereupon committed to Prison, where he must lie for a long Time, waiting perhaps for the Day of Judgment and Execution; and suppose only one Person sues him to an Execution, the Defendant must deliver up all his Estate and Effects to be discharged from that only; and is never the nearer being discharged from all his

Debts, because he may be arrested at another's Suit, and so imprisoned again; *which makes the latter End of that Man worse than the first*: And so he may be arrested and imprisoned from Time to Time; so that such a Man's Life is one continued Scene of Misery; nor is the first Person who sues him to Execution obliged to divide the Debtor's Estate and Effects amongst the other Creditors that has not sued him: And this is not the bare literal Meaning thereof, for it has been deemed otherwise in some Men's Cases, that if any Person's Debt, and the Cost added thereto, shall not exceed the Sum of One hundred Pounds (he) that is the Debtor, shall be discharged from that Debt only: And suppose he should be charged at the Suit of divers Persons, none exceeding One hundred Pounds, they may all join to give him the Allowance of two Shillings and Fourpence *per Week*; and let him be discharged from all his other Debts except one to detain him, this is an Evasion of the Law: For a Man may by that Means be detained his whole Life, and it has been the Death of many a Person, as well as the Ruin of many a Family. The *Romans* of old had a most excellent Law, as you will find mentioned by *Cælius Rhodiginus*, L. 15. C. 17. who tells you, that there was an ancient Proscription or Custom, that the Person's Goods, meaning a Debtor's, that
would

would not appear in the Court, should be set at Sale to satisfy his Creditors ; the Form whereof was thus : “ The Creditor, “ having obtained Leave of the LORD “ CHIEF JUSTICE to proceed in this “ Manner, he committed the ordering of “ the Sale to one principal Creditor, and “ he, in the Name of all the rest, solemn- “ ly proclaimed in the chief Places of the “ City ; as you may find in *Rosm. Antiq. L. 9. “ C. 12.* the following Words, after naming “ the Occasion thereof, says, *Ille debitor “ noster in ejusmodi causa est, ut bona ejus “ divendi debeant, nos creditores patri- “ monium ejus distrabimus quicumque emere volet adesto.*” From thence you may perceive what a strict and great Regard was had to the Liberty of Mankind in general in those early and Heathenish Times, who fell under these unfortunate Circumstances ; their Goods and Inheritances were immediately confiscated for the Payment of his or their Creditors, not waiting for the Forms of Processes in the Law : For as soon as a Petition was exhibited, requiring the Party Defendant to appear and shew Cause why he neglected to pay this or that Person what was due to him or them, the Party Defendant being summoned and neglecting to appear, was a sufficient Foundation for such a *Confiscation.* And if this Method was to be used now, instead of proceeding in so long

long, formal and expensive Manner, Law-suits would be contracted, and the Creditors sooner enjoy their just Dues; the Debtor would have less Opportunity of spending all his Creditors Money in Prison; and it would be a Means of preventing the utter Destruction of both Debtors and Creditors: And if able-body'd single Men thus discharged, were to be sent or taken into his Majesty's Service to serve their Country for a Livelihood, it would hinder them perhaps from being knavishly inclined, which most Persons in Prison learn a great Share of, through bad Precepts and Examples. For let them go into Prison never so ignorant, and stay there but one Year, they will talk of nothing but Law all that Time, where they learn more Experience and artful Tricks than an Attorney will in seven; and when they get once discharged from thence, they turn Land-brokers, or Splitters of the Law, by stirring up Strife, and setting Mankind together by the Ears in order to get a necessary Support of Life; so dangerous is a Prison. If there was a Proviso in every *insolvent* Act, or *Act of Grace*, that such able-body'd Men as should be found in all the Prisons in this Kingdom, fit for his Majesty's Service either by Sea or Land, should not be discharged without entering into the Service, what a prodigious Army would they make? There would not be
so

so many Petitions to the Parliament as annually there are, nor so many Thousands procure themselves to be made Prisoners, to wait the favourable Opportunity of such Acts to defraud their Creditors; they would not be so fond of a Prison as many of them are: And suppose, on the other hand, that there should be a Peace, and no Occasion of their Service in that Capacity, how many Thousands of Acres of Land are in this Kingdom that lie *waste, barren and uncultivated*, which the Labour and Industry of such Men might, if they were to be employed, improve and make good: Such an Undertaking as this would be a sufficient Employment, not only for such able-body'd Men, but it would also suit the Age of almost every Person so discharged from his Confinement, and be a Means of providing for himself and Family; and not only so, but the Profits arising therefrom, I might venture to say, would be almost sufficient to maintain the Dignity of the Crown: It would likewise be a Means in a little Time to reduce the great Number of Taxes that are at present paid; it would maintain the Poor, assist our Neighbours abroad by Sale of our Grain and Commodities: In short, it would make our Kingdoms the greatest and most flourishing of any in the World, and also prevent the inferior Sort of Mankind by such Provision from entering into the Service of foreign Nations

to

to fight against ourselves: But to conduct the Management thereof, or the Means of doing it, I intend for another Conversation; only give me Leave at present to step to Dinner, for I hear the HORN, and then I will give you in writing what I have collected in the Law, to be Mistakes or Inconveniencies; so please to excuse, Sir, your very humble Servant — *Philon*. Your thankful and most obedient Servant, Sir.

P H I L O N.

WELL met again, *Philaethes*, I hope your little Repast in the Hall has enabled you to proceed.

P H I L A L.

I DID promise to leave with you an Account in writing of some Mistakes or Inconveniencies I find not remedied in the Law, of which there are many amongst *Merchants, Tradesmen, Shipping, Manufactures, the Militia, Exportation, Importation of Goods, &c.* and others relating to *Accounts, Administrators, Executors, Errors, Appeals, Arbitrations, Awards, Parish-Laws, Attornments, Distresses, Dowers, Bankrupts, Barretors, Maintainance, Deeds, Felonies, Debts grantable or assignable, &c.* these and Hundreds more I could name that the Law has not provided a sufficient Remedy against; and there are many
Laws

Laws not regarded, others *obsolete* and *useless* by the Length of Time ; and some seem to be very hard and penal, which my Time at present will not permit me to mention : But as I am *a Lover of Truth*, and speak the same out of an honest and just Intention, without Partiality or Hypocrisy, whatever is herein mistaken I hope to see rectified, and what done amiss be over-looked, and what deficient be speedily amended. And as I must draw to a Conclusion, and not swell this short Tract into a Volume, but leave the Amendments aforesaid to wiser Heads and better Judgments, I must bid you farewell. Take this Paper-Writing I promised to leave with you, it is all at present from

Your, &c.

PHILALETHES.

POST-

P O S T S C R I P T.

THAT the Law of *Dower* is a hard Law to Women, that they may not have the Thirds of all their Husband's Reversions and Rents, as well as of their Lands and Tenements in Possession:

THAT the Law forbidding Aliens and Strangers, that are not our Enemies, to carry on a free Trade with us, has been thought hard; but it is greatly overlook'd:

THAT the Law forbids a Man to build a House except he can lay four Acres of Land of Inheritance to it:

THAT by an Outlawry in civil Actions a Man forfeits all his Goods and Chattels, though he never had Notice of any such Proceedings, nor can he possibly prevent it, and the Forfeiture thereof goes to the Crown, whereby the Plaintiff in the Action is further from his Debt, unless he puts himself to great Expence; and a Person outlaw'd for Felony not only forfeits all his Estate, but may lose his Life, and perhaps have no Notice of it; or a Person flying for Felony forfeits his Estate, though he afterwards appears and is found innocent:

THAT the Wife and Children, in Cases of Treason and Felony, should be punished for their Father's Offence, with the Loss of all their Estate, tho' the Children might be entitled by Descent;

THAT

THAT the Law of Waif, which is where one hath stoln my Goods, and is so closely pursued that he is forced to leave the Goods; these Goods are forfeited to the Lord of the Mannor where they are left:

THAT all the Creditors of a Person condemned for Felony lose their Debts, and the Felon's Estate forfeited to the Crown:

THAT an *Insimulcomputasset* can never be unravelled, either in Law or Equity, let there be never so many Mistakes therein:

THAT a Survivor, in case of Jointennancy, doth take all:

THAT Statutes are frequently extended without Notice given to the Conusor:

THAT Corporations are not chargeable for the Debt it oweth as a sole Person is:

THAT Entries into the Claims of Land are frequently made in secret:

THAT the Grantee of a Reversion in many Cases cannot have a good Grant of the Reversion till the Tenant Attorn:

THAT an Action of Debt does not lie for a Rent upon a Grant in Fee-simple, or Lease for Life, as it does upon a Lease for Years:

THAT a Debt is not assignable over from one to another, except a Bail-Bond, Promissory-Note, Debts by a Commission of Bankruptcy, or special Act of Parliament for that Purpose, and Debts to the Crown:

THAT a Rent may be extinct or suspended by the Purchase of the Land:

THAT

THAT a Joint-tenant, or a Tenant in Common; not the Heir of him that is dead, may have Restitution or Possession against a Defeisor, or Abator in Possession, as another Man may have :

THAT Lands shall escheat rather than descend to the Half-blood :

THAT a Man may have an Estate at his Disposal, and yet the same not liable to his Debts; and he that has the Tenement by Descent or Gift, he may dispose of it as he pleases; nor are the Lands of the Ancestor liable to his Debts after they are sold and out of the Hands of the Heir at Law :

THAT all Lands goeth to the eldest Son at the Common Law, and in Burrough English to the youngest :

THAT Infants at Years of Discretion are not bound by these Contracts except for Necessaries, tho' an Infant may be an Executor or Administrator :

THAT no Heir at Law shall be answerable for any small Contract Debt due or owing from his Ancestor, *unless the Intestate bound his Heir* by his Deed so to do, let there be never so much owing, even tho' the Estate was purchased with the Creditors Money. Many more Cases I could mention which want a Remedy.

F I N I S



7
at
th
ot
d-
ple
ng
nd
ne-
was
any
t: a